(1)

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

HUNG LIN WU – PETITIONER,

VS.

U. S. COURT OF APPEALS FOR THE NINTH CIRCUIT – RESPONDENT.

ON PETITION FOR A WRIT OFCERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

THE QUESTIONS PRESENTED FOR REVIEW

1. Whether the US Court of Appeals for the Ninth Circuit erred in denying Petitioner's Petition for Panel Rehearing and Petition for Rehearing En Banc because Petitioner's violation of 18 U.S.C. Section 2318 is not a Crime involving moral turpitude?

2. Whether the US Court of Appeals for the Ninth Circuit erred in denying Petitioner's Petition for Panel Rehearing and Petition for Rehearing En Banc because Petitioner's violations of 18 U.S.C. Section 2318 is not an aggravated felony?

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

The undersigned counsel of record for Petitioner, in compliance with Rule 14(b) and rule 29.6 of the Rules of the Supreme Court of the United States, certifies the following listed person and parties have an interest in the outcome of this case:

1. US Court of Appeals for the Ninth Circuit, Respondent
2. Eric H. Holder, Jr., U.S. Attorney General
3. Peter D. Keisler, Attorney for AG
4. James A. Hunlot, Attorney for AG
5. Kristin Edison, Attorney for AG
6. The Board of Immigration Appeals
7. John D. Taylor, Immigration Judge
8. Kimberly Penfil, Attorney for Petitioner
9. Peter R. Afrasiabi, Attorney for Petitioner

10. Cindy S. Chang, Attorney for Petitioner

11. Hung Lin Wu, Petitioner

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STATEMENT OF JURISDICTION

On December 2, 2008, the US Court of Appeals for the Ninth Circuit denied the Petitioner's petition for panel rehearing and petition for rehearing en banc. This Court's jurisdiction to grant the review on a writ of certiorari is discretional. The judicial discretion is warranted here because there are legal questions of exceptional importance involved in this case.

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

1. 18 U.S.C. Section 2318
2. 8 U.S.C. Section 1182(a)(2)(i)(I)
3. Immigration & Nationality Act Section 240(A)(a)
4. Immigration & Nationality Act Section 212(h)
5. 8 U.S.C. Section 1229(a)
6. 8 U.S.C. Section 1182(h)(1)(B)

7. 8 U.S.C. Section 2318(a)(1)

8. 18 U.S.C. Section 2318(b)(4)(A)-(B)

9. 8 U.S.C. Section 1101(a)(43)(R)

10. 8 U.S.C. Section 1101(a)(43)(U)

STATEMENT OF THE CASE

This is an immigration case. Petitioner is a 45-year-old lawful permanent resident of the United States and citizen of Taiwan. Petitioner petitions for a writ of certiorari on the decision rendered by the US Court of Appeals for the Ninth Circuit on December 2, 2008.

Petitioner owned a copy service. He reproduced CDs and CD labels for his customers. One of those transactions – a transaction in which a South American company who hired him told Petitioner that it had the right to create copies of the CD in question – resulted in Petitioner pleading to a conviction under 18 U.S.C. Section 2318, a multi-part statute without intent to defraud requirement.

On December 6, 1999, Petitioner pled guilty to a violation of 18 U.S.C. Section 2318. There was no trial. The administrative record contains only the Judgment and Probation Commitment Order, but no other record of his plea.

In May 2000, prior to his release from jail, Immigration officials interviewed Petitioner, and they concluded that he was "not deportable" and that his crime was "not a crime involving moral turpitude". However, on October 30, 2002, the Department of Homeland Security placed Petitioner in removal proceedings by the issuance of a Notice to Appear (NTA). The NTA charged Petitioner as being removable under 8 U.S.C. Section 1182 (a)(2)(i)(I). based upon his 18 U.S.C. Section 2318 conviction

constituting a crime of moral turpitude and did not contend he was removable on the basis of an aggravated felony offense.

In response, Petitioner applied for cancellation of removal and a waiver of inadmissibility under Section 240(A)(a) and Section 212(h) of the Immigration & Nationality Act, 8 U.S.C. Section 1229(a), and 8 U.S.C. Section 1182(h)(1)(B).

On January 14, 2005, the immigration judge (IJ) denied Petitioner's application for cancellation of removal because IJ found that the offense Petitioner was charged of qualified as an aggravated felony and was a crime involving moral turpitude.

Petitioner timely appealed the IJ's decision to the Board of Immigration Appeals (BIA). On April 14, 2006, BIA dismissed Petitioner's appeal.

On or about May 10, 2006, Petitioner filed a

petition for review to the US Court of Appeals for the Ninth Circuit. The 9th Circuit Court denied his petition for review on August 6, 2008.

Thereafter, Petitioner filed a timely petition for panel rehearing and petition for rehearing en banc. Unfortunately, those petitions were denied on December 2, 2008.

ARGUMENT

I. A Section 2318 Conviction is not a Crime of Moral Turpitude

The decision of the US Court of Appeals for the Ninth Circuit should be reversed because Section 2318 does not contain an intent to defraud element, which is a necessary requirement to conclude a Section 2318 violation constitutes a crime of moral turpitude. Section 2318 on its face prohibits knowingly trafficking in counterfeit or illicit

materials, but does not require that the act of knowing trafficking also includes an intent to defraud anyone. Therefore, the statute itself does not demonstrate precise conduct that can be deemed intentionally fraudulent. Further, in Blanco v. Mukasey, 518 F.3d 714 (9th Cir. 2008), the Court noted that "[a] crime involves fraudulent conduct, and thus is a crime involving moral turpitude, if intent to fraud is either 'explicit in the statutory definition' of the crime or 'implicit in the nature' of the crime." The Blanco Court further clarified between "knowing misrepresentation" and "fraud":

> The element of knowing misrepresentation does not itself make fraud an element of crime, however, because it shows only that "the forbidden act is done deliberately and with knowledge," and not that the individual acts

with evil intent. Id.

While Section 2318 requires that the offender have knowledge of the counterfeit nature of the goods being trafficked, it does not require that the offender intends to induce another person to act to his or her detriment. The statute does not require that a buyer be defrauded into purchasing the goods and, more importantly, it cannot be determined that the owner of a genuine label is somehow induced to act to his or her detriment. The owner's work has been copied, but certainly the owner has not been induced to engage in any type of behavior adverse to his or her interests because at no time were any false representations made to him. Therefore, a Section 2318 conviction is not a crime of moral turpitude because it does not contain the requisite intent to

defraud element.

II. The Section 2318 Conviction is not an Aggravated Felony

Section 2318 criminalizes the use of an illicit label on various items, defining an illicit label as a genuine label that is used without authority. 18 U.S.C. Section 2318 (a)(1) & (b)(4)(A)-(B). This conduct does not constitute counterfeiting, forgery or bribery under 8 U.S.C. Section 1101 (a)(43)(R). Therefore, it cannot be concluded as a categorical matter that a Section 2318 violation is an aggravated felony.

Furthermore, in Lui v. INS, 250 F.3d 105 (2nd Cir. 2001) the Court held that a criminal conviction for possession of counterfeit securities with the intent to deceive third parties was not an aggravated felony because as a matter of law such a conviction was not one involving an attempt to commit a fraud

under 8 U.S.C. Section 1101(a)(43)(U). As such, knowingly trafficking in counterfeit materials, where there is no intent to deceive even required, should not be deemed an aggravated felony.

CONCLUSION

Based on the foregoing reasons, Petitioner respectfully requests that this Petition for a Writ of Certiorari be granted.

Dated: February 20, 2009

Respectfully Submitted

By: /S/

Cindy S. Chang, Esq.
Attorney for Petitioner,
Hung Lin Wu

APPENDIX

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UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED
DEC 02 2008
MOLLY C. WYER, CLERK
U.S. Court of Appeals

HUNG LIN WU,

Petitioner,

V.

MICHAEL B. MUKASEY,
Attorney General,

Respondent.

No. 06-72507

Agency No. A071-822-770

ORDER

Before: GIBSON, * O'SCANNLAIN, and GRABER, Circuit Judges.

The panel has voted to deny the petition for panel rehearing. Judges O'Scannlain and Graber have voted to deny the petition for rehearing en banc, and Judge Gibson has so recommended.

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* The honorable John R. Gibson, Senior United States Circuit Judge for the Eight Circuit, sitting by designation.

APPENDIX A

The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on it.

The petition for panel rehearing and petition for rehearing en banc are DENIED.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED
AUG 06 2008
MOLLY C. DWYER, CLERK
U.S. Court of Appeals

HUNG LIN WU,

Petitioner

V.

MICHAEL B. MUKASEY,
Attorney General,

Respondent

No. 06-72507

Agency No. A071-822-770

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted March 4, 2008
Pasadena, California

Before: GIBSON, ** O' SCANNLAIN, and GRABER, Circuit Judges.

*This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.
** The Honorable John R. Gibson, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

APPENDIX B

Hung Lin Wu, a 45 year-old permanent resident of the United States and citizen of Taiwan, petitions for review of the Board of Immigration appeals' decision that he is inadmissible and its denial of his Applications for cancellation of removal and a waiver of inadmissibility. The BIA concluded that WU's conviction for trafficking in Counterfeit labels, in violation of 18 U.S.C. § 2318, was a crime involving moral turpitude and therefore Wu was inadmissible under 8 U.S.C. § 1182(a) (2) (A) (i) (I). The BIA also concluded that the offense of trafficking in counterfeit labels under § 2318 is an aggravated felony under 8 U.S.C. § 1101(a) (43) (R) because such conduct "related to counterfeiting," making Wu ineligible for cancellation of removal, 8 U.S.C. § 1229b, and waiver, 8 U.S.C. § 1182(h). We deny the petition for review.

"[A]ny alien convicted of, or who admits committed, or who admits committing acts which constitute the essential elements of ....a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime ... is inadmissible." 8 U.S.C. § 1182(a) (2) (A) (i) (I). To determine whether a crime involves moral turpitude, we apply the "categorical" approach set forth in Taylor v. United States, 495 U.S. 575, 602 (1990), the purpose of which is to assess whether the statue of conviction is narrower than on equal to the generic definition of moral turpitude. See Navarro- Lopez v. Gonzales, 503 F.3d 1063, 1067-68 (9th Cir. 2007) (en banc). If so, the conviction necessarily is for a crime involving moral turpitude. Id.

Offenses involving fraud are crimes of moral turpitude. Id. at 1074 (Reinhardt, J., concurring for

the majority of the court). Even if intentional fraud is not an explicit element of those the offense, as in this case, a crime involves fraud if "the nature of the crime is inherently fraudulent," which we have defined as involving "knowingly false representations made in order to gain something of value." Id. At 1076.

Wu pleaded guilty to 18 U.S.C. § 2318 (1996), which proscribed "knowingly traffic [king] in a counterfeit label affixed or designed to be affixed to" a specified set of materials. A guilty plea under § 2318 is categorically a plea to an inherently fraudulent crime because the statue of conviction's elements fit within the definition of inherently conduct, which is knowingly making false representations in order to gain something of value. First, counterfeit labels are by definition false representations because they "appear [] to be

genuine, but [are] not." Id. § 2318(b) (1). Persons who traffic in such materials knowing them to be counterfeit perpetuate the false representation, as they are knowingly passing off counterfeit material as real. Second, according to § 2318, the term "traffic" means "to transport... as consideration for anything of value." Id. § 2318(b) (2). Therefore, the act trafficking is done necessarily "to gain something of value." Navarro- Lopez, 503 F.3d at 1076.

Wu contends that a conviction under § 2318 is not a categorical fit to punish fraud because it also encompasses conduct by sellers who sell to willing buyers of counterfeit goods. We held in Tall v. Mukasey, 517 F.3d 1115, 1119-20 (9th Cir. 2008), that a petitioner' state conviction for willfully manufacturing, intentionally selling, or knowingly possessing for sale any counterfeit trademark is categorically a crime involving moral turpitude

because all conduct punished by the statue is inherently fraudulent. Analogizing such a crime to a species of theft, we concluded that such crimes categorically inherently fraudulent because the commission of such crime "necessarily defrauds the owner of the mark, or an innocent purchaser of the counterfeit items, or both." Id. at 1120. Under Tall, then, the definition of "inherently fraudulent" also encompasses willing buyers of counterfeit goods. Therefore, the BIA correctly concluded that Wu is inadmissible for having committed a crime of moral turpitude.

The BIA also found Wu ineligible for cancellation of removal and waiver of inadmissibility because it concluded that his guilty plea under 18 U.S.C. § 2318 was for an offense "relating to counterfeiting." And therefore qualified as an aggravated felony under 8 U.S.C. § 1101(a) (43) (R).

Section 2318 is categorically a counterfeiting statute, as the objects it concerns are "counterfeit label[s]," the end product of counterfeiting. What the statue actually addresses are those who "knowingly traffic [] in" such labels. Under an ordinary meaning of "relating to," trafficking in counterfeit labels would be an activity relating to counterfeiting.

Wu argues that § 2318 is not categorically a counterfeiting statue because it also criminalizes the use of "illicit label[s]." While the current version of § 2318 proscribes the trafficking in of "illicit label[s]," the version of § 2318 proscribes the trafficking in of "illicit label[s]." the version of § 2318 in effect when judgment was entered against Wu did not. See Intellectual Property Protection and Courts Amendments Act of 2004, Pub. L. No. 108-482, §102(a) (1), (a) (5), 118 Stat. 3912, 3914. Therefore this argument lacks merit.

Moreover, in Albillo-Figueroa v. INS, 221 F. 3d 1070, 1073-74 (9th Cir. 2000), we held that a conviction under 18 U.S.C. § 472, which criminalizes use or possession of counterfeit bills, qualified as an aggravated felony under 8 U.S.C. § 1101(a) (43) (R) because it was an offense relating to counterfeiting. In so holding, we concluded that "[s]ection 101 (a) (43) (R) necessarily covers a range of activities beyond those counterfeiting or forgery itself." Albillo-Figueroa, 221 F.3d at 1073; see also Vizcarra-Ayala v. Mukasey, 514 F.3d 870,877 (9th Cir. 2008)(" [R]elating to' has been applied to include activities ancillary to the core offense-for example, possession of counterfeit or forged documents, Albillo-Figueroa v. INS, 221 F. 3d 1070 (9th Cir. 2000); Richards v. Ashcroft, 400 F.3d 125 (2d Cir. 2005); knowing use of a counterfeit mark, Park v. Attorney General, 427 F.3d 66 (3d Cir. 2006); and forging documents with

the intent to "deceive," as opposed to the traditional 'defraud,' drakes v. Zimski, 240 F.3d 246 (3d Cir. 2001)."). By penalizing those who knowingly traffic in counterfeit labels, § 2318, like the statute of conviction in Albillo-Figueroa, "seeks to discourage [the act of] counterfeiting through the criminalization of the use of its end product," Albillo-Figueroa, 221 F. 3d at 1073.

For the foregoing reasons, we DENY Wu's Petition for Review.

PETITION FOR REVIEW DENIED.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A71 822 770- Los Angeles

Date: APR 14 2006

In re: HUNG LIN WU

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT:

Frank L. Botti, Esquire

CHARGE:

Notice: Sec. 212(a)(2)(A)(i)(I), I & N Act [8 U.S.C. § 1182(a)(2)(A)(i)(I)]-
Crime involving moral turpitude

APPLICATION: Termination of removal; 212(h) waiver

ORDER:

PER CURIAM. The Respondent is a native

and citizen of Taiwan and a lawful permanent resident of the United States. On December 6, 1999, he was convicted in the United States District Court, Central District of California, for the offense of trafficking in counterfeit labels in violation of 18 U.S.C. § 2318, for which he was sentenced to term of 33 months of imprisonment and fined $60,000. The Immigration Judge concluded that this offense qualified as a crime involving moral turpitude under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act, so as to render the respondent removable from the United States. The Immigration Judge also determined that this offense was an aggravated felony under section 101(a) (43) (M) of the Act, rendering the respondent ineligible for the relief of cancellation of removal under 240B (a) of the Act or a waiver of inadmissibility under section 212(h) of the Act. On appeal, the respondent argues that his

offense does not qualify as a crime involving moral turpitude or as an aggravated felony. The Department of Homeland Security (the "DHS" formerly the Immigration and Naturalization Service) has not filed an appeal brief.

This Board has held that a criminal offense involves "moral turpitude" if the relevant statue defines the offense in such manner that it necessarily entails conduct on the part of the offender that is inherently base, vile, or depraved, and contrary to accepted rules of morality and the duties owed between persons or to society in general. *Matter of Torres-Varela,* 23 I&N Dec.78, 83(BIA 2001). Neither the seriousness of a criminal offense nor the severity of the sentence imposed is determinative of whether a crime involves moral turpitude. *Id.* at 84. Moreover, although crimes involving moral turpitude often involve an evil intent, such a specific intent is not an

absolute prerequisite to finding that a crime involves moral turpitude. *Id.* at 83.

The statue under which the respondent was convicted of trafficking in counterfeit labels, 18 U.S.C. § 2318, states in pertinent part that "[w]hoever knowingly traffics a counterfeit label ...counterfeit documentation or packing...shall be fined or imprisoned for not more than five years, or both." Pursuant to 8 U.S.C. § 2318 (b) (2), "the term "traffic" [in section 8 U.S.C. § 2318] has the same meaning as in section 2320(e) of this title." Under that section," traffic" means to transport, transfer, or otherwise dispose of, to another, for purposes of commercial advantage or private financial gain , or to make, import, export, obtain control of, or possess, with intent to so transport, transfer, or otherwise dispose of." 18 U.S.C. § 2320 (e) (2).

While crimes that have a specific intent to defraud as an element have always been found to involve moral turpitude, certain crimes are inherently fraudulent and involve moral turpitude even though they can be committed without a specific intent to defraud. *See Winestock v. INS*, 576 F.2d 234 (9th Cir. 1978) ("the intent to defraud may also be implicit in the nature of the crime"). In *Matter of Flores,* 17 I&N Dec.225 (BIA 1980), this Board concluded that moral turpitude was inherent in the crime of uttering or selling false or counterfeit paper relating to the registry of aliens in violation of 18 U.S.C. § 1426 (b), even though the statue did not require proof of a specific intent to defraud. In reaching this conclusion, we noted that 18 U.S.C. § 142 (b) requires knowledge on the part of the offender that the documents he or she was selling were counterfeit. And we found that the act of selling

counterfeit documents, like the act of the counterfeiting currency, involved deliberate deception and interfered with the government's ability to function. *Id.* at 228-30.

The offense of trafficking in counterfeit labels, as defined in 18 U.S.C. § 2318, is in many ways analogous to the offense of uttering or selling false or counterfeit papers relating to the registry of aliens under 18 U.S.C. § 1426(b). First, both crimes involve traffic in counterfeit or fraudulent items or objects. Second, both crimes require proof of an intent traffic and knowledge that the items or objects are counterfeit. Trafficking in counterfeit good is "tantamount to commercial forgery," and involves the theft of someone else's property in the form of a trademark, even if it does not involve deceiving the purchasers of the counterfeit goods and services. *See* David J. Goldstone & Peter J. Toren, *The*

Criminalization of Trademark Counterfeiting, 31 CONN. L. REV. 1, 4 (Fall 1998). Indeed, trafficking in counterfeit goods is inherently immoral activity because it entails dishonest dealing and deliberate exploitation of the public and the mark owner. *Id.* at 22 (nothing that "[u]sing the good name of another without authorization to bolster the value of one's own work is amoral wrong that violates social norms"). We thus conclude, as did the Immigration Judge, that the offense of trafficking in counterfeit labels or counterfeit documentation or packaging is a crime involving moral turpitude.

We also find that the offense of trafficking in counterfeit labels in violation of 18 U.S.C. § 2318 is an aggravated felony. Regardless of whether the offense is an aggravated felony under section 101(a)(43)(M) of the Act as Immigration Judge ruled, we find that the offense qualifies as an aggravated

felony under section 101(a) (43)(R) of the Act. Section 101(a)(43)(R) of the Act provides that an offense is an aggravated felony when it is "an offense *relating* too commercial bribery, *counterfeiting,* forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year (emphasis added)." As noted above, 18 U.S.C. § 2318 criminalizes an individual who "knowingly traffics in... a counterfeit label ... or counterfeit documentation or packaging." We have consistently ruled that the phrase "relating to" has a broad meaning, particularly when it is used with a general term like " counterfeiting" or "controlled substance" rather than with a specific statutory reference. *See, e.g., matter of Esqueda*, 201 I&N Dec. 850, 860-62(BIA 1994); *Matter of Hernandez-Ponec*, 19 I&N Dec. 613, 615-16 (BIA 1988) although the Act does

not define the terms "counterfeit" or "counterfeiting," the term "counterfeit" is defined elsewhere as

> *To unlawfully forge, copy, or imitate an item*, esp. money or a negotiable instrument (such as a security or a promissory note) or other officially issued item of value (such as a postage stamp or a food stamp), or to possess such an item without authorization and with the internet to deceive or defraud by presenting the item as genuine. *Counterfeiting includes producing or selling an item that displays a reproduction of a genuine trademark, usu. To deceive buyers into thinking they are purchasing genuine merchandise.*

Black's Law Dictionary (8th ed.2004) (emphasis added). Because the statute under which the respondent was convicted fits within the definition of

"counterfeit" cited above, we find that it is related to counterfeiting as contemplated by section 101 (a)(43)(R) of the Act. Furthermore, Congress did not limit the scope of the term "counterfeiting" in section 101(a) (43) (R) of the Act by referencing specific federal offenses, as it did with other offenses in the aggravated felony definition. Compare sections 101(a) (43) (B) and (R) of the Act by referencing specific federal offenses, as it did with other offenses in the aggravated felony definition. *Compare* sections 101 (a) (43) (B) and (R) of the Act. Because the respondent's convicting arising under 18 U.S.C. § 2318 necessarily "relates to" counterfeiting, we find that the respondent has been convicted of an aggravated felony and is therefore ineligible for the relief of cancellation of removal or waiver of inadmissibility under section 212(h) of the Act.

Accordingly, the respondent's appeal is dismissed.

FOR THE BOARD

IMMIGRATION COURT
606 SOUTH OLIVE ST., 15TH FL.
LOS ANGELES, CA 90014

In the matter of

Case No.: A71-822-770

WU, HUNG LIN
Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IIMMIGRATION JUDGE

This is a summary of the oral decision entered on Jan 14, 2005.

This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[x] The respondent was ordered removed from the United States to Taiwan

or in the alternative to

[ ] Respondent application for voluntary departure was denied and respondent was ordered removed to

APPENDIX D

Or in the alternative to

[ ] Respondent application for voluntary departure was granted until upon posting a bond in the amount of $ _____

with an alternate order of removal to

Respondent's application for:

[ ] Asylum was ( ) granted ( ) denied ( ) withdrawn

[ ] Witholding of removal was ( ) granted ( ) denied ( ) withdrawn

[x] A waiver under section 212 (h) was ( ) granted (x) denied ( ) withdrawn Preterminated

[x] Cancellation under section 240A (a) was ( ) granted ( ) denied ( ) withdrawn. Preterminated

Respondent's application for:

[ ] Cancellation under section 240A (b) (1) was ( ) denied ( ) withdrawn. If granted it is ordered

that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Cancellation under section 240A (b) (2) was ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Adjustment of status under section _____ was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Respondent's application of ( ) withholding of removal ( ) deferral of removal under article III of the Convention Against Torture was ( ) granted ( ) denied ( ) withdrawn.

[ ] Respondent's status was rescinded under Section 246.

[ ] Respondent is admitted to the United States as

A _____ until _____

[ ] As a condition of admission, respondent is to Post a $ _____ bond.

[ ] Respondent knowingly filed a frivolous asylum application after proper notice.

[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration judge's oral decision.

[ ] Proceedings were terminated.

[ ] Other:

Date: Jan 14, 2005

_____

JOHN D. TAYLOR
Immigration Judge

Appeal: Waived / Reserved (Checked) Appeal Due by:

2/14/05

ALIEN NUMBER: 71-822-770

ALIEN NAME: WU, HUNG LIN

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M)

PERSONAL SERVICE (P) (Checked)

TO: [ ] ALIEN [ ] ALIEN c/o Custodial officer [x]

ALIEN'S ATT/REP [X] INS

DATE: 1/14/2005 BY COURT STAFF _____

ATTACHMENTS: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal

Services List [ ] Other

U.S. DEPARTMENT
OFJUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION
REVIEW
IMMIGRATION COURT
Los Angeles, California

File No. A 71 822 770 January 14, 2005

In the Matter of

HUNG LIN WU,) IN REMOVAL PROCEEDINGS
Respondent)

CHARGES:

APPLICATIONS:

ON BEHALF OF RESPONDENT:
David Paz Soldan, Esquire

ON BEHALF OF DHS:
Jeannette Parkel, Esquire

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent applied for admission June 16th, 2002 as a lawful permanent resident and then was convicted December 6, 1999 for trafficking in counterfeit labels, counterfeit musical and computer

program discs, and I found that that conviction was valid on January 24th, 2003, and I found that the respondent was removable as charged. The NTA is marked as Exhibit 1. The conviction documents are contained at Exhibit 2.

Today the respondent applied for the relief of cancellation of removal and a waiver of the ground of inadmissibility. The cancellation application is at Exhibit 3 and the waiver is at Exhibit 4.

I found that the conviction did involve fraud because the respondent was convicted of trafficking and this implies that the discs were sold. And also the amount of the restitution $60,000 and the 33 months sentence implies that they were sold, and I believe that supplies the element of knowledge and that it makes it a CIMT as well as an aggravated felony.

And so under 101(a) (43) (M) I find that the

respondent is not eligible for cancellation of removal and that he is unable to get a waiver because of his conviction for an aggravated felony. So I'm denying the cancellation and and the waiver. And there doesn't appear to be any other relief available so I'm going to order the removal of the respondent to the country of Taiwan.

JOHN D. TAYLOR,
Immigration Judge